IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6016 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BILAL AHMEDBHAI PIR ONBEHALF OF AHMEDBHAI H PIR

Versus

DISTRICT MAGISTRATE

Appearance:

MS BANNA S DUTTA for Petitioner

MR DIGANT JOSHI AGP for Respondent No. 1, 4

MS PJ DAVAWALA for Respondent No. 3

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 04/08/2000

ORAL JUDGEMENT

#. The petitioner who is the son of the detenue Ahmedbhai Hussainbhai Pir has approached this Court by filing this petition under Article 226 of the Constitution of India.

#. District Magistrate, Panchmahals at Godhra vide Annexure : A passed an order of detention under sub-section (2) of section 3 of Prevention of Blackmarketing & Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as "the Act") on 21.12.99. It appears that the order of detention was executed or served either on 31.5.2000 or 1.6.2000. The petitioner has averred on oath in the petition that a representation was forwarded on 13th June, 2000 vide Annexure : D through the Legal Advisor to the District Magistrate, with a request to forward a copy of the representation to the State Government and the Central Government for revocation of the order. Thus, the District Magistrate was requested to forward the representation. It appears that the representation was received on 20th June, 2000. For the said purpose, the petitioner has annexed a zerox copy of acknowledgment due issued by the Department of Posts. Prima facie, it appears that the Depatch Clerk of the Collector's office, Rajkot received the same on or about 13th June, 2000. Nothing is required to be stated about the receipt of the representation by the Despatch Clerk, Rajkot because in this case, the District Magistrate, Panchmahals at Godhra has given reply to the representation made by the son of the detenue, the petitioner herein. From the contents of the letter, it appears that the petitioner requested to supply certain documents and it was pointed out to the petitioner that the demand made for certain document being not tenable, demand cannot be accepted. It is further pointed out that the representation has been forwarded to the Central Government. Under the circumstances, the arguments made by the learned advocate that it was considered by the District Magistrate after the order was approved by the State Government has no substance. Suffice it to say that in the instant case, when the District Magistrate has forwarded the representation to the Central Government, what the Central Government has done in this mater is not placed before the Court. The Central Government is also a party respondent namely Secretary to the Govt. of India, Ministry of Civil Supplies & Consumer Affairs, New Delhi. Learned advocate for the respondent has filed sick note and is not present. No reply has been filed by the Central Government in this matter and therefore, the representation made by the petitioner has remained unattended till today. The State Government has also filed no reply in this matter. When the reply is not filed in the matter, it becomes very difficult for the Court to appreciate the manner in which the officers of the State Government or the Central Government acted.

The Court has issued rule in this mater on 29.6.2000. In a matter of detention, order is passed after all the documents are collected by the competent authority, and,such authority in the instant case, is the District Magistrate. Therefore, the District Magistrate ought to have filed an affidavit, justifying the order of detention. Unfortunately, the representation forwarded by the petitioner has not been disposed off, and, if disposed of, when, is not stated before Court, and therefore, the continued detention cannot be held to be legal, valid and justified and therefore, this petition is required to be allowed. The detenue is ordered to be released forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

*****

pirzada/-